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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT APPLICATION

Applicants : M. Scott Reichardt et al.
Application No. : 09/731,115 Confirmation No. : 9203
Filed : December 6, 2000
For : SYSTEMS AND METHODS FOR COORDINATING
INTERACTIVE AND PASSIVE ADVERTISEMENT AND
MERCHANDISING OPPORTUNITIES
Art Unit : 2623
Examiner : Son P. Huynh

New York, NY 10036
June 1, 2007

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Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Pursuant to 1296 Off. Gaz. 2 (July 12, 2005), applicants request review of the rejection of claims 1, 3-8, 18-29, 31-39, 46-57, 59-64, and 74-84 in the above-identified application. No amendments are being submitted with this Request. This Request is being filed with a Notice of Appeal.

ARGUMENTS

I. Introduction

Claims 1, 3-8, 18-29, 31-36, 46-57, 59-64, and 74-84 are pending in this application. Claims 1, 3-8, 18-24, 29, 31-36, 46-52, 57, 59-64, and 74-80 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Alexander et al. U.S. Patent 6,177,931 (hereinafter "Alexander"). Applicants respectfully traverse the § 102(e) rejections.

II. Applicants' Reply to the 35 U.S.C. § 102(e) Rejections

Applicants' invention is generally directed to coordinating advertising and merchandising opportunities across interactive application and various passive video products, such as passive program guides and barker channels. *See* specification, page 3, lines 10-19. Applicants' claimed invention facilitates the integration of passive program guides and barker channels with interactive applications by providing various branded selectable options that link to special passive video products and interactive content. *See* specification, pages 40-45 and FIGS. 12-15. For example, an interactive alert icon may be overlaid onto a passive program guide or barker channel. A user may select this interactive alert icon to link to advertising or merchandising opportunities.

A. Independent Claims 1, 29, and 57

Applicants' independent claims 1, 29, and 57 are directed to a method and systems for accessing a passive program guide or barker channel and interactive content from an interactive application. A branded selectable option having a product brand logo of a provider (e.g., TV Guide) is provided in a first interactive application display. In response to a user selecting the branded selectable option, a barker channel or passive program guide and interactive content (e.g., a user-selectable alert icon overlaid on the barker channel or passive program guide) are provided in a second display that replaces the first display. In this way, a user may link to a special passive video product containing interactive content from an interactive application display (e.g., an interactive media guidance application display).

1. The Examiner's Interpretation of Applicants' Claimed Barker Channel is Unreasonably Broad

Although applicants realize that claims must be given their broadest reasonable interpretation, applicants respectfully submit that the Examiner's interpretation of applicants' independent claims 1, 29, and 57 is unreasonable. Each of applicants' independent claims 1, 29, and 57 recites providing a "passive program guide or barker channel and interactive content" in response to selecting a branded selectable option in an interactive display. In the Office Action, the Examiner equates a barker channel with a "television program, video clip, or other information associated with a particular channel" (Office Action, page 6). Therefore, it is the Examiner's position that applicants' claimed barker channel includes any video clip, television

program, or advertisement that is displayed in a PIP window or advertisement window, like Alexander's PIP Window 12 or Ad Windows 14 and 16. *See* Office Action, pages 6-7.

Applicants submit that this interpretation is particularly unreasonable because (1) it is inconsistent with the term "barker channel" as widely understood by those skilled in the art and (2) it is inconsistent with the express definition (which is consistent with the widely understood meaning) provided in applicants' specification.

Applicants remind the Examiner that claim terms must be given their broadest reasonable interpretation "in light of the specification." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (emphasis added); MPEP § 2111. Applicants' specification clearly describes a barker channel, and barker channels were also well-known in the art at the time applicants' invention was made. Barker channels are dedicated promotional television channels that display full-screen promotions. Typically, the barker channel promotions are for pay-per-view programs. *See* specification, page 2, lines 27-32. Equating barker channels with any television program or video clip associated with a particular channel is overbroad and unreasonable. For this reason alone, applicants submit that independent claims 1, 29, and 57 are patentable over Alexander.

2. Even If the Content Shown in Alexander's PIP Window or Ad Windows Could Be Considered a Barker Channel, It Would Still Not Replace a First Interactive Display

The Examiner also maintains that Alexander shows an interactive application display screen containing a branded selectable option having a product brand logo graphic and interactive content. *See* Office Action, pages 3-4. The Examiner further contends that this interactive application display screen is replaced with a second display screen that contains the passive program guide or barker channel and interactive content. *Id.*

The Examiner clarifies his position in the Office Action and states that the first interactive display is interpreted to be Alexander's entire FIG. 5 display screen (PIP window and interactive program guide) before a particular television program or particular icon or window is selected by the user, and the second display is interpreted to be Alexander's entire FIG. 5 display screen after the user has selected a particular television program or particular icon or window. *See* Office Action, page 3.

Applicants submit that the notion that a first display is replaced by a second display when an area of the first display (e.g., a PIP window) is filled with content is unreasonable. Applicants' claims 1, 29, and 57 clearly specify that the first interactive application display (Alexander's entire FIG. 5 display screen, according to the Examiner) is replaced by a second display containing the passive program guide or barker channel. If the Examiner considers Alexander's entire FIG. 5 display screen as the first interactive application display, then this entire display must be replaced by the passive program guide or barker channel and interactive content.

For at least the foregoing reasons, applicants submit that independent claims 1, 29, and 57 are patentable over Alexander. Applicants respectfully request, therefore, that the rejection of these claims (as well as dependent claims 3-8, 31-36, and 59-64) under 35 U.S.C. § 102(e) be withdrawn.

B. Independent Claims 18, 46, and 74

Applicants' independent claims 18, 46, and 74 are directed to systems and a method for providing advertisements within an interactive application. Branded passive programming with an advertisement associated with a brand inserted into the passive programming is provided to the user equipment. An alert icon is displayed on the user equipment overlaid on the currently displayed branded passive programming to indicate the availability of additional information associated with the currently displayed branded passive programming. A user is provided with an opportunity to select the alert icon to indicate a desire to access the additional information. In response to the user selection, an interactive display is provided on the user equipment that includes an advertisement associated with the brand of the branded passive programming.

The Examiner contends that Alexander provides branded passive programming with an advertisement associated with a brand inserted into the passive programming to the user equipment. *See* Office Action, page 4. The Examiner cites to a portion of Alexander that described automatically tuning a user to a particular advertising channel during the telecast of a television program. *See* Office Action, pages 4-5. The television may be automatically tuned back to the viewer's chosen television program after the advertisement is finished. *See* Alexander, col. 32, line 61 – col. 33, line 8. According to the Examiner, this feature meets applicants' claimed branded passive programming limitation. Applicants respectfully disagree and submit that the Examiner's interpretation is unreasonable.

Alexander merely states that a "change channel command" may be inserted into the VBI when an advertisement is telecast, causing the television to tune to a particular channel. *See* Alexander, col. 33, lines 1-8. However, applicants' independent claims 18, 46, and 74 each recite providing "branded passive programming with an advertisement inserted into the passive programming" to the user equipment. Since applicants' claims require the branded passive programming to be provided to the user equipment, the branding must occur prior to sending the programming to the user equipment. As explained in applicants' specification, "programming may be branded by the source of the programming, main facility 12, distribution facility 16, Internet service system 235, or at any other suitable facility" (specification, page 44). Thus, branded passive programming is programming with an advertisement actually inserted into the programming video source. This is consistent with the commonly understood meaning of branded programming. The Examiner's contention that Alexander's channel change command is an instance of program branding is unreasonable.

Moreover, applicants' independent claims 18, 46, and 74 recite that the advertisement is associated with the brand of the branded passive programming, not the passive programming itself. In the Office Action, the Examiner interprets applicants' claimed advertisement as a "video clip, detail description, website, chat room" related to the passive programming or the programming being viewed immediately before the advertisement is displayed. *See* Office Action, page 4 and Alexander, col. 33, lines 26-50. The Examiner has not pointed to any disclosure in Alexander that shows that the advertisement is associated with the brand (e.g., TV Guide) of any branded passive programming.

For at least the foregoing reasons, applicants submit that independent claims 18, 46, and 74 are patentable over Alexander. Applicants respectfully request, therefore, that the rejection of these claims (as well as dependent claims 19-24, 47-52, and 75-80) under 35 U.S.C. § 102(e) be withdrawn.

III. Conclusion

For the foregoing reasons, applicants submit this application is in condition for allowance. Reconsideration and allowance are respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brian E. Mack', is written over a horizontal line.

Brian E. Mack
Registration No. 57,189
Agent for Applicants
Fish & Neave IP Group
Ropes & Gray LLP
Customer No. 1473
1211 Avenue of the Americas
New York, New York 10036-8704
Tel.: (212) 596-9000